DRIGINAL

RECEIVED

JUL - 2 1997

Before the FEDERAL COMMUNICATIONS COMMISSION OF THE SECRETARY Washington, D.C.

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Replacement of Part 90 by Part 88 to Revise	·)	PR Docket No. 92-235
the Private Land Mobile Radio Services and	.)	
Modify the Policies Governing Them)	
)	
Examination of Exclusivity and Frequency)	
Assignments Policies of the Private)	
Land Mobile Services)	

REPLY OF THE AMERICAN AUTOMOBILE ASSOCIATION

The American Automobile Association ("AAA"), by its attorneys, hereby responds to the oppositions and comments filed regarding AAA's Petition for Reconsideration in the above-referenced docket.

INTRODUCTION

In its Second Report and Order in this proceeding, the Commission consolidated twenty services within the Private Land Mobile Radio Services into two broad pools: a Public Safety Pool and an Industrial/Business Pool. 1/ The reason the Commission decided to establish a separate Public Safety Pool "stem[s] from the fact that a majority of the communications required by the public safety community are used to protect life and property" and that "competing demands for

^{1/} Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Second Report and Order, PR Docket No. 92-235, FCC 97-61 (rel. March 12, 1997) ("Second Report and Order").

and use of spectrum from entities with a different mission and less critical set of needs than this community could place an unacceptable strain on the integrity of public safety spectrum." 2/

The Commission placed the Auto Emergency frequencies -- which are used by AAA to respond to over 80,000 emergency road calls a day -- in the Industrial Pool, rather than the Public Safety Pool. 3/ With the exception of frequencies in three services (Power, Petroleum and Railroads), any coordinator within the Industrial Pool will have the ability to coordinate any frequency within the pool, including frequencies formerly reserved for Auto Emergency use. 4/

In its Petition for Reconsideration, AAA demonstrated that the Commission's decision failed to adequately consider the substantial public safety aspect of the service provided by AAA. 5/By permitting multiple entities to coordinate the Auto Emergency frequencies, the Second Report and Order will place an increased burden on those frequencies, and on AAA's ability to respond to emergency situations.

This result directly conflicts with the Commission's objectives in this proceeding. Accordingly, AAA recommended that the Commission reconsider its

^{2/} Id. at ¶ 16.

 $[\]underline{3}$ / Id. at ¶ 23.

^{4/} Id. at ¶ 41-42.

^{5/} Petition for Reconsideration of the American Automobile Association at 6-9 (filed May 19, 1997) ("AAA Petition for Reconsideration").

decision and place the Auto Emergency frequencies in the Public Safety Pool. 6/ At a minimum, AAA demonstrated that it should be given the same coordination rights within the Industrial Pool as other quasi-public safety services. 7/

The Association of Public Safety Communications Officials ("APCO") and the Personal Communications Industry Association ("PCIA") both oppose AAA's request for the Commission to recognize the significant public safety aspect of AAA's operations. 8/ Specifically, APCO opposes AAA's request because it would expand the Public Safety Pool to include non-government entities. 9/ PCIA opposes any recognition that services within the Industrial Pool that are used for public safety purposes should have greater control over frequency coordination. 10/ As we demonstrate below, neither of these parties has demonstrated why AAA should not be given comparable protection to other public safety and quasi-public safety entities.

^{6/} AAA Petition for Reconsideration at 12.

^{7/} AAA Petition for Reconsideration at 15-17.

^{8/} Comments of APCO in Response to Petitions for Reconsideration and Clarification (filed June 19, 1997) ("APCO Comments"); Opposition and Comments of the Personal Communications Industry Association (filed June 19, 1997) ("PCIA Opposition").

^{9/} APCO Comments at 3.

^{10/} PCIA Opposition at 6-7.

I. THERE IS NO REASON TO RESERVE THE PUBLIC SAFETY POOL FOR GOVERNMENT USERS.

The primary basis for APCO's opposition to including the Auto Emergency frequencies in the Public Safety Pool is because auto emergency systems are not "provided by governmental entities or private entities acting under governmental authority." 11/ APCO only opposes inclusion of the Auto Emergency frequencies in the Public Safety Pool and does not dispute that those frequencies are used for "important safety-related" functions that are worthy of protection within the Industrial Pool. 12/

As an initial matter, APCO's position ignores the fact that AAA often works in direct partnership with state and local government rescue agencies, both on a day-to-day basis and in mass emergency situations. 13/ In situations where a private entity is using frequencies to provide service at the request of, or in conjunction with, a government agency, the distinction between government and non-government use that APCO asks the Commission to draw is completely arbitrary. Indeed, we understand that a substantial number of local government agencies have filed informally with the Commission expressing their support for AAA's Petition for Reconsideration in this proceeding based on AAA's history of cooperation with those agencies.

^{11/} APCO Comments at 3.

^{12/} Id. at 2.

^{13/} AAA Petition for Reconsideration at 8, Exhibit A.

Furthermore, even when AAA is not operating in direct partnership with state and local government, the services it provides are no less vital to the safety of the public. When AAA rescues a baby locked in a car or a motorist stranded in extreme weather conditions, the impact on the public is the same as if that rescue had been performed by the police or fire department. Rather than focusing on whether the entity using a frequency is a government agency or a private entity, the Commission should focus instead on the nature of the service for which the frequencies predominantly are used and the impact on the public of disruptions or delays in communications on those frequencies.

As AAA demonstrated in its Petition, placing the Auto Emergency frequencies in the Industrial Pool -- without even the minimal coordination rights granted to quasi-public safety services -- will result in delays in communications on those frequencies. This will severely impact the level of service AAA is able to provide, thereby jeopardizing the safety of the public. Accordingly, under the analysis proposed herein, placement of the Auto Emergency frequencies in the Public Safety Pool is warranted.

APCO also argues that the Auto Emergency frequencies are not entitled to comparable treatment with the Special Emergency frequencies -- which were placed in the Public Safety Pool -- because the Special Emergency operations "are provided by governmental entities" or are "private ambulance services that provide critical life-saving activities on a daily basis." 14/ AAA agrees completely

^{14/} APCO Comments at 3. This characterization does not appear to be entirely accurate. Veterinarians, for example, are included in Special Emergency but do not

that frequencies used for safety activities on a daily basis should be included in the Public Safety Pool. Indeed, it is because AAA provides safety-related services on a daily basis that the Auto Emergency frequencies are appropriately included in the Public Safety Pool.

As to APCO's argument that the provision of service by governmental entities justifies different treatment for Auto Emergency and Special Emergency, we demonstrated above that a distinction based on the status of an entity, rather than the nature of the service for which the frequencies are used, is inconsistent with the Commission's objectives in this proceeding. For example, the fact that school buses are operated by government, as opposed to private, entities has little bearing on how the safety of the public would be impacted if communications on those frequencies are disrupted.

APCO also expresses concern about allowing non-government users to have "unfettered access" to scarce public safety frequencies. 15/ This concern is entirely unwarranted. Under AAA's proposal, licensees in the Auto Emergency service would continue to use those frequencies to provide service, although those frequencies now would be in the Public Safety Pool. The only time an Auto Emergency user would have access to other frequencies in the Public Safety Pool

fall into either category identified by APCO, and do not appear to be connected with public safety activities in any event.

15/ APCO Comments at 3.

under AAA's proposal would be when that user was sponsored by a government agency. 16/

In sum, by basing eligibility for the Public Safety Pool on whether the service is provided by a government entity, APCO would exclude from that pool services that have an equal or greater impact on public safety than some of the services included. Because this result is inconsistent with the Commission's objectives, the Commission should not follow APCO's recommendation.

II. PCIA'S OPPOSITION IGNORES THE COMMISSION'S FINDING THAT SOME SERVICES WITHIN THE INDUSTRIAL POOL NEED ADDITIONAL CONTROL OVER COORDINATION.

PCIA's Opposition is premised on the view that no service within the Industrial Pool requires special coordination procedures and that any coordinator in the pool is capable of coordinating any frequency in the pool. 17/ This position flatly contradicts the Commission's recognition in the Second Report and Order that some services require greater control over frequency coordination because they must be able to respond to public safety situations. As the Commission stated:

[W]e believe maintaining the integrity of spectrum used for such public safety purposes is extremely important and using coordinators who are knowledgeable with such special communications needs is the best way to protect these systems. 18/

^{16/} AAA Petition for Reconsideration at 18.

<u>17/</u> PCIA Opposition at 7 ("every radio service has a public-safety related component, and <u>none</u> of the radio services in the combined pool is more important than another.").

¹⁸/ Second Report and Order at ¶ 41.

In making this finding, the Commission recognized that not all coordinators are equally capable of responding to the special needs presented by some services. Therefore, the relevant issue is not whether quasi-public safety services should have greater control over coordination, but which services require such control. As explained above, the Commission should focus on the nature of the service for which the frequencies are used and the impact on the public of delays in communications on those frequencies. When frequencies are primarily used for safety-related services, as is the case with the Auto Emergency frequencies, the Commission should take steps to minimize the potential for disruptions on those frequencies by giving the established frequency coordinator greater control.

PCIA implies that the multitude of parties seeking special coordination rights based on the public safety nature of their service somehow diminishes the force of each party's argument. 19/ In fact, the opposite is true. The fact that so many parties are concerned about losing control over coordination suggests there is widespread concern about the inability of other coordinators to understand the nuances of each service.

In particular, there is significant concern regarding the extent to which incumbents in the Auto Emergency frequencies, as well as other safetyrelated services, will be protected from competing demands after the two-pool

^{19/} PCIA Opposition at 6.

system takes effect. 20/ The old system provided coordinators like AAA an incentive to balance the needs of incumbents and new users because both sets of users were their constituents. In contrast, coordinators under the new system can place new users in frequencies where they do not represent the incumbents, in which case the coordinator will have little incentive to safeguard the interests of the incumbents.

Consequently, to preserve the ability of existing licensees to provide safety-related services, AAA requested that it be granted the same coordination rights as the three quasi-public safety services (Power, Petroleum and Railroads) identified by the Commission in the Second Report and Order. As noted by APCO, auto emergency services "have an important safety-related role," and should be "treated similar to 'public service' radio frequencies such as utility and railroad services. Such a result would be consistent with the recent Public Safety Wireless Advisory Committee ("PSWAC") report." 21/

AAA also recommended that the Commission clarify that coordinators for quasi-public safety services would have no greater obligation to share frequencies with other users than exists under the current interservice sharing rules. 22/ This proposal, which was supported by UTC, would ensure that there are

^{20/} AAA Petition for Reconsideration at 10-11; see also Petition for Partial Reconsideration of the Alarm Industry Communications Committee at 3-5 (filed May 19, 1997); Petition for Reconsideration of the American Trucking Association at 10 (filed May 16, 1997); Comments of the Forest Industries Telecommunications at 6-7 (filed June 19, 1997).

^{21/} APCO Comments at 2.

^{22/} AAA Petition for Reconsideration at 17.

known standards that coordinators for these frequencies will apply. 23/ The effect of this proposal would be to preserve the status quo for quasi-public safety services, while allowing consolidation to proceed for other services. This strikes the optimal balance between the Commission's goals of promoting efficient use of spectrum and protecting the integrity of spectrum used for public safety services.

CONCLUSION

For the reasons stated herein and in AAA's Petition for Reconsideration, the Commission should place the Auto Emergency frequencies in the Public Safety Pool. If the Commission does not follow this approach, it should, at a minimum, give AAA and other quasi-public safety services stronger coordination rights within the Industrial Pool.

Respectfully submitted,

AMERICAN AUTOMOBILE ASSOCIATION

By:

Marissa G. Repp Steven F. Morris

HOGAN & HARTSON L.L.P. 555 Thirteenth Street, N.W. Washington, D.C. 20004-1109 (202) 637-5600

Its Attorneys

July 2, 1997

^{23/} Comments of UTC on Petitions for Reconsideration at 10 (filed June 19, 1997).

CERTIFICATE OF SERVICE

I, Deborah N. Ng, do hereby certify that copies of the foregoing Reply of the American Automobile Association were mailed, postage prepaid by first class mail, to each of the following this 2nd day of July 1997:

Wayne V. Black John Reardon Paula Deza Keller and Heckman LLP 1001 G Street, N.W. Suite 500 West Washington, D.C. 20001

Dennis C. Brown Brown and Schwaninger 1835 K Street, N.W. Suite 650 Washington, D.C. 20006

Mark E. Crosby
President and CEO
Industrial Telecommunications
Association, Inc.
1110 N. Glebe Road
Suite 500
Arlington, VA 22201

Mark J. Golden
Vice President, Regulatory
Personal Communications Industry
Association
500 Montgomery Street, #700
Alexandria, VA 22314

Christopher D. Imlay Booth, Freret, Imlay & Tepper, P.C. 1233 20th Street, N.W. Suite 204 Washington, D.C. 20036 William K. Keane Arter & Hadden 1801 K Street, N.W. Suite 400K Washington, D.C. 20006-1301

Lars-Goran Larsson Ericsson, Inc. 1634 Eye Street, N.W. Washington, D.C. 20006-4083

George Petrutsas Fletcher, Heald & Hildreth, P.L.C. 1300 North 17th Street 11th Floor Rosslyn, VA 22209-3801

John A. Prendergast Blooston, Mordkofsky, Jackson & Dickens 2120 L Street, N.W. Suite 300 Washington, D.C. 20037

Alan R. Shark
President
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Jeffrey L. Sheldon General Counsel UTC 1140 Connecticut Avenue, N.W. Washington, D.C. 20036 Alan S. Tilles
David E. Weisman
Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

Deborah N. Ng